K

1952.

O. Transfer of Property

File No. G76-52

Legal Deptt.

G BRANCH

Subject:— Opinion on the Transfer of Property Act

P=4
B

File No. O. Transfer of Property 152

Gen. 134 e.

G 76-52

Legal Department File No. 3. Transfer of Property / 195.

Sr. No.	R.I/O. No.	Subject	Pages.
		Opinions on the Transfer of Property Act.	
1.	G. 309 10-9-52.	Question whether a suit should be filed against Ramnath for recovering the possession and rent and restoration to Somnath.	1-4
2.	W701 18-12-52.	Sale deed by Mohammadkhan in respect of the godown in favour of Shri K.K. Congre- question regarding restoration of the godown on the termination of the base.	5-10.

Section 108(q) of the Transfer of Property Act provides that on the determination of the lease the leasees is bound to put the lessor into possession of the property. Section 108(1) provides that the lessor is bound to pay or tender at the proper time and place the premium or rent to the lessor or his agent in this behalf. In this case when the premises for the Government godown at Mansa were taken on rent, no lease was executed and it is not therefore, clear as to who the lessor was. The possession of the Wadi was taken from Shri Somnath Prabhudas Yagnik as the manager of the wadi. Later on while making the Bill the godown keeper has shown the name of the owner as" [illegible]

". It is on the strength of this bill that the Mamlatdar made payment of rent for the period from the 30th May 1949 to 31st December 1949 to Ramdas Nathubhai the grandson of Sha Hukumchand Ishwar. This payment was made on the 10th February 1950. Till then Somnath Prabhuram or any of the other gentlemen who now claim the wadi as belonging to Avdichya Bramin cast did not claim the rent. Later on the possession was delivered and the balance of rent was also paid to the agent of the grandson. According to the abovementioned provisions of the Transfer of Property Act the rent ought to be paid to the lessor and the lessor ought to be put in possession of the property on deternination of the lease. In this case the Mamlatdar has given possession to the grandson of Shri Hukumchand Iswar (deceased) who was shown as the owner. Now that the rent has been paid and possession given, Government may follow the advice of the District Government Pleader and need not take any action in the matter.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 309, dated the 10th July, 1952.

SSM / 21/7/56.

Office of the R.L.A.

Although the godown has been taken by Government on lease from Shri Pallavkar, it is now admitted by Shri Pallavkar that the godown does not belong to him but to the deceased Fattekhan Dawoodkha Deshmukh. Apparently, therefore, the heirs of Fattekhan Dawoodkhan Deshmukh would be entitled to the rent to the godown and the restoration of possession on the determination of ~~the~~ the lease. It appears that Fattekhan Dawoodkhan Deshmikh died in 1947, leaving behind him his widow, four daughters and only one son, Mohamedkahn. According to Mohammedan Law all these persons are the heirs of Fattekhan and are entitled to their respective shares in the godown and the rent thereof. It appears that Mohammedkhan alone has passed a sale-deed in respect of the godown in favour of one K.R. Dongre of Mahad and, on a notice being given by the latter, the Assistant Purchasing Officer of Mahad agreed to pay him the rent. Apparently therefore, the consent given by the Assistant Purchasing Officer was based on ignorance of all facts of the case and such consent would not be binding on him. The Assistant Purchasing Officer should withhold payment of rent and direct both the parties to have their rights settled in a Court of law. They should further be informed that they should obtain a declaration from the Court asto who would be entitled to the restoration of the godown on the termination of the lease.

Remembrancer of Legal Affairs.
U.R. to C.S.J. No. Gr 701 dated the 18th Dec., 1952.